

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

DENNIS MARIO RIVERA

Plaintiffs

v.

THE COCA-COLA COMPANY, CCI
LIMITED PARTNERSHIP d/b/a COCA-
COLA PUERTO RICO BOTTLERS,
INSURANCE COMPANY ABC,
COMPANY 123, ADVERTISING
AGENCY 456, RICHARD ROE, MARY
ROE and the Legal Conjugal
Partnership they Both Comprise

Defendants

CASE No.: 13-1426

Copyright Infringement

Plaintiff Demands
Trial By Jury

**VERIFIED REQUEST FOR INJUNCTION AND COMPLAINT
FOR COPYRIGHT INFRINGEMENT**

I. JURISDICTION AND VENUE

1. This action arises under the Copyright Laws of the United States, Title 17 U.S.C. § 101 the jurisdiction of this Court is founded on Title 28 U.S.C. § 1338 (a)(b) and Title 28 U.S.C. § 1331 of the Judicial Code with Supplementary Jurisdiction founded on Title 28 U.S.C. § 1367 of the Judicial Code for violations of Puerto Rico Moral Rights statutes.

2. Accordingly, venue is properly laid in this court under Title 28 U.S.C. § 1400(a) and § 1391(b), because the defendant or his agent resides or may be found in the district.

II. PARTIES

3. Plaintiff, DENNIS MARIO RIVERA, is a known painter, visual artist, musician and actor resident of Puerto Rico, with a career of over 30 years in the industry and author and copyright owner of the artwork "Don Pedro y los Pitirres".

4. Defendant THE COCA-COLA COMPANY is the world's largest beverage company, with more than 500 sparkling and still brands, and who is registered under the laws of Puerto Rico or any state in the United States of America, with corporate offices located in One Coca-Cola Plaza NW, Atlanta, Georgia 30113, and offices and operations located in Suite 1801 654 Muñoz Rivera Ave. San Juan, Puerto Rico 00918, who at all times alleged in the complaint produced, displayed, and distributed for profit copies and unauthorized derivative works of Plaintiff's artwork "Don Pedro y los Pitirres" for the annual Puerto Rico Festival, "Las Fiestas de la Calle San Sebastián", (hereafter Las Fiestas) for the year 2012. THE COCA-COLA COMPANY is jointly liable for all copyright violations alleged in the complaint.

5. Defendant CCI LIMITED LIABILITY COMPANY is a company or corporation organized under the laws of Puerto Rico and who does business as (d/b/a) COCA-COLA PUERTO RICO BOTTLERS, with offices and operations located in Carr. PR-174 Lot 107, Parque Industrial Minillas, Bayamón, Puerto Rico 00959, who at all times alleged in the complaint produced, displayed, and distributed for profit copies and unauthorized derivative works of Plaintiff's artwork "Don Pedro y los Pitirres" for the annual Puerto Rico Festival, "Las Fiestas de la Calle San Sebastián", (hereafter Las Fiestas) for the year 2012. CCI LIMITED LIABILITY

COMPANY d/b/a COCA-COLA PUERTO RICO BOTTLERS is jointly liable for all copyright violations alleged in the complaint (Hereafter and in conjunction with defendant THE COCA-COLA COMPANY to be collectively referred to as COCA-COLA).

6. Defendant INSURANCE COMPANY ABC is the fictitious name of an insurance company that upon Plaintiff's belief, during all the times herein mentioned, had in full effect an insurance policy with one or more of the co-defendants as named insured, with an advertising injury provision or errors and omission or any other provision with coverage over this claim. This insurance company is a corporation and/or legal entity organized under the Laws of the Commonwealth of Puerto Rico or any state of the United States, doing business in Puerto Rico and with its principal offices in the Commonwealth of Puerto Rico or any state of the United States. INSURANCE COMPANY ABC is jointly liable for all copyright violations alleged in the complaint. The real name is unknown at this time and will be substituted pursuant to the Federal Rules of Civil Procedure once the real name is made known.

7. Defendant COMPANY 123 is the fictitious name of any company or corporate entity jointly liable for all copyright violations alleged in the complaint over Plaintiff's artwork "Don Pedro y los Pitirres". The real name of Company 123 is unknown at this time and will be substituted pursuant to the Federal Rules of Civil Procedure once the real name is made known.

8. Defendant ADVERTISING AGENCY 456 is the fictional name of the advertising agency of any of the defendants, that is jointly liable for all copyright

violations alleged in the complaint, whose name and identity is unknown at this moment and will be substituted pursuant to the Federal Rules of Civil Procedure once the real name is made known. ADVERTISING AGENCY copied, reproduced, displayed, and distributed plaintiff's copyrighted work without a license and developed the promotional campaign that violated plaintiff's copyright over "Don Pedro y los Pitirres".

9. Defendants RICHARD DOE and MARY ROE and the Legal Conjugal partnership they comprise are the fictional names of any person jointly liable for all copyright violations alleged in the complaint, whose names and identities are unknown at this moment. The real name of RICHARD DOE and MARY ROE are unknown at this time and will be substituted pursuant to the Federal Rules of Civil Procedure once the real name is made known.

III. FACTS

10. The Puerto Rico Festival "Las Fiestas de la Calle San Sebastián", or Las Fiestas is a popular annual event organized by the municipality of San Juan since the 1970's.

11. The Plaintiff, Dennis Mario Rivera, a known painter and visual artist with a career of more than 30 years in the industry.

12. The Plaintiff produces, displays, distributes, and sells works of art in different styles and media of the visual arts.

13. The Plaintiff is the author and sole owner of the visual art titled "Don Pedro y los Pitirres" created in 1982 and published on January 1, 1983. It is part of The Roofless Museum Under Sun and Rain ("Museo Sin Techo a Sol y Agua"),

which is an outdoor installation of art works on paper pasted to the colonial walls of the renowned San Sebastian Street and exists as a single copy.

14. "Don Pedro y los Pitirres", a woodcut engraving, is a work of art as defined by the U.S. Copyright Act that in general portrays a man dressed in a suit holding a cane with a gray bird by his shoulder, and is pasted directly on a wall under the San Sebastián Street sign in Old San Juan, Puerto Rico. It happens to be a landmark of the San Sebastián Street.

15. The visual art "Don Pedro y los Pitirres" clearly depicts the copyright symbol "©" and registered trademark symbol "®".

16. In addition the visual art undoubtedly states in Spanish that the reproduction is prohibited ("Prohibida la reproducción") and that the copyright is attributed to Dennis Mario, it's author ("Derecho de autor Dennis Mario").

17. "Don Pedro y los Pitirres" visual art is registered since 1999 and can be found in the Copyright Public Catalog. The registration number is VA0000950846.

18. "Don Pedro y los Pitirres" visual art is also registered in the Puerto Rico Department of State since 2013 with registration voucher #HITW-92HAX6BE.

19. Defendants, without obtaining a license, willfully reproduced, displayed and distributed for profit unauthorized adaptations or derivative works of the plaintiff's work, "Don Pedro y los Pitirres" in the form of unauthorized posters/banners and poster-like prop used for the 2012 Las Fiestas event to promote the Coca-Cola beverage.

20. The 2012 Las Fiestas event took place from Thursday, January 12, 2012, through Sunday, January 15, 2012.

21. The unauthorized works accompanied a Coca-Cola troupe that travelled through the Streets of San Juan during the 2012 Las Fiestas event.

22. The unauthorized posters/banners usurping the creation bare a striking similarity to the original work "Don Pedro y los Pitirres", and in fact it could very well be that defendants simply photographed the work and printed it to adjust to their infringing needs.

23. Defendants had access to the work for they have participated in the Las Fiestas event in the past and could clearly see the original work as it is displayed as a famous San Juan landmark.

24. Defendants did not pay the plaintiff for the use, reproduction, display and adaptation of the copyrighted work "Don Pedro y los Pitirres" for the 2012 Las Fiestas event.

25. Defendants did not seek a license from the author for the use of the copyrighted art "Don Pedro y los Pitirres" for the 2012 Las Fiestas event.

26. By using, reproducing, displaying and adapting the previously copyrighted art "Don Pedro y los Pitirres" during the 2012 Las Fiestas event, Defendants willfully violated Plaintiff's copyrights, for the work is clearly labeled and identified as being authored by plaintiff Dennis Mario and language prohibiting reproduction.

27. Defendants even included the author's name and the copyright symbol "©" and registered trademark symbol "®" in the unauthorized infringing works, thus making a false representation that plaintiff Dennis Mario had authorized the use.

28. Defendants have inflicted severe damages to plaintiff, by incorporating an artwork that was never intended for commercial use into Coca Cola's branding

and product promotion for profits during the 2012 Las Fiestas event without any authorization from the author.

29. Defendants have inflicted severe damages to plaintiff by distorting and modifying in a way prejudicial to the author's honor or reputation the original work of "Don Pedro y los Pitirres" during the 2012 Las Fiestas event by reproducing the image without authorization, creating an unauthorized poster-like prop paraded through the streets of San Juan.

30. Plaintiff, through information or belief claims that other infringements have occurred that may only be discovered when disclosed by defendants when defending this case.

IV. CAUSES OF ACTION

A. COPYRIGHT INFRINGEMENT

31. Plaintiff realleges paragraphs one (1) through thirty (30) of this complaint.

32. Plaintiff is the author of and has registered the copyright for the infringed work "Don Pedro y los Pitirres" *supra*.

33. The Defendants had access to Plaintiff's artworks due to the work's location as a San Sebastian street landmark and the fact that they have participated in numerous Las Fiestas events. In fact, access should be inferred due to the striking similarity existing between the original artwork and the infringing work.

34. Defendants had knowledge that "Don Pedro y los Pitirres" is a registered copyrighted work because the work itself has copyright symbol, has language stating both that Dennis Mario is the author, and that the work was not to be reproduced.

35. Defendants have never contacted or approached the Plaintiff to request a license or permission for the use, reproduction, display, distribution, or adaptation of the visual art "Don Pedro y los Pitirres."

36. Defendants do not own the copyright or license over the visual art "Don Pedro y los Pitirres" to use, reproduce, display, distribute nor to prepare any derivative work based on the copyrighted work for the 2012 Las Fiestas event or for any other purpose or use.

37. Even armed with such knowledge, defendants willfully violated Plaintiff's copyrights by copying, reproducing, displaying, and distributing for profit and advertising purposes "Don Pedro y los Pitirres" for the 2012 Las Fiestas event.

38. Defendants therefore are jointly liable for copyright infringement as pleaded in this complaint.

B. MORAL RIGHTS UNDER V.A.R.A.

39. Plaintiff realleges paragraphs one (1) through thirty-eight (38) of this complaint.

40. Defendants have violated plaintiff's rights under the Visual Artists Rights Act.

41. Defendants have taken plaintiff's works of art and without a license, have (1) Created unauthorized reproductions of "Don Pedro y los Pitirres" and used them as a poster-like prop for the 2012 Las Fiestas event, violating plaintiff's right to prevent being associated with the infringing works; (2) Distorted, mutilated or modified plaintiff's artwork "Don Pedro y los Pitirres" by creating an unauthorized derivative work in the form of a poster-like prop or otherwise fusing the artwork

into the Coca-Cola advertising campaign of the 2012 Las Fiestas event; (3) publishing copies of the previously described unauthorized poster-like prop for use in their promotional advertising parade through the 2012 Las Fiestas event; and (4) Publicly displaying copies of the previously described unauthorized poster-like prop for use in their promotional advertising parade through the 2012 Las Fiestas event.

C. MORAL RIGHTS UNDER P.R. LAWS

42. Plaintiff realleges paragraphs one (1) through forty (40) of this complaint.

43. Defendants have violated plaintiff's rights under Puerto Rico Moral Rights statutes by effectively depriving plaintiff Dennis Mario's rights to enjoy all benefits of authorship over the artwork "Don Pedro y los Pitirres".

44. Defendants have taken plaintiff's works of art and without a license, have (1) Created unauthorized reproductions of "Don Pedro y los Pitirres" and used them as a poster-like prop for the 2012 Las Fiestas event, violating plaintiff's right to prevent being associated with the infringing works; (2) Distorted, mutilated or modified plaintiff's artwork "Don Pedro y los Pitirres" by creating an unauthorized derivative work in the form of a poster-like prop or otherwise fusing the artwork into the Coca-Cola advertising campaign of the 2012 Las Fiestas event; (3) published copies of the previously described unauthorized poster-like prop for use in their promotional advertising parade through the 2012 Las Fiestas event; and (4) Publicly displayed copies of the previously described unauthorized poster-like prop for use in their promotional advertising parade through the 2012 Las Fiestas event.

V. RELIEF

A. INJUNCTIVE RELIEF

45. Plaintiff realleges paragraphs one (1) through forty-four (44) of this complaint.

46. The work of art "Don Pedro y los Pitirres" was created by Plaintiff and has been registered in the U.S. Copyright Office since 1999 under registration number VA0000950846

47. "Don Pedro y los Pitirres" is also registered in the Puerto Rico Department of State since 2013 with registration voucher #HITW-92HAX6BE.

48. Defendants' willful infringement of copyright in the 2012 Las Fiestas requires injunctive relief in order to avoid further unauthorized uses and irreparable harm.

49. By reason of defendant's actions plaintiff has suffered and will continue to suffer extreme hardship, actual and impending irreparable loss and/or damage in the reproduction, display, creation and distribution of copies of "Don Pedro y los Pitirres" for future Las Fiestas, events enjoyed and attended by the general public.

50. At this stage in the proceedings Plaintiff has no adequate or speedy remedy at law for the above-mentioned conduct of defendants, and this injunctive relief here sought is plaintiff's only means for securing relief.

51. Being that Plaintiff is the author of the works and defendants had no license to use the "Don Pedro y los Pitirres" artwork for the 2012 Las Fiestas, it is highly likely that Plaintiff will prevail on the merits of his claim.

52. The injury sustained by plaintiff will be drastically reduced through the issuance of an injunction even if the defendants seek an appeal of this Honorable Court's order.

53. Therefore, plaintiff move the court to issue an Injunction restraining the defendants, their agents, and servants, daring the probable appeal of this action, from infringing plaintiffs copyrights rights over "Don Pedro y los Pitirres".

54. Accordingly, the injunctive relief should order Defendants to relinquish all unauthorized derivative works to the plaintiff that may be in defendants' possession to guarantee plaintiff's rights for impoundment and destruction of the unauthorized works.

B.DAMAGES

55. Plaintiff realleges paragraphs one (1) through fifty-four (54) of this complaint

56. At the present, plaintiff has identified the above-mentioned infringements.

57. Plaintiff seeks statutory damages in the amount of \$150,000 per infringement. Las Fiestas is a profitable and popular event celebrated each year, which is a primary reason the for the Defendants to use Plaintiff's artwork, as it is well known piece of art and landmark located at the street where the festival takes place. Defendants willfully violated plaintiff's copyrights and the copyrighted work was already registered at the time the infringement took place. Thus Plaintiffs should be awarded the maximum statutory amount.

58. Plaintiff seeks damages for violation of P.R. Moral rights statutes in the amount of \$350,000.

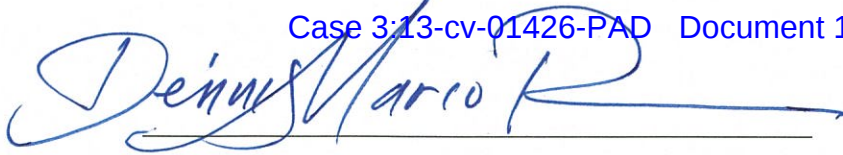
59. Plaintiff seeks impoundment and destruction of the infringing works.

60. Plaintiffs request that Defendants pay to plaintiff the costs and disbursements of this action, together with reasonable attorneys' fees.

WHEREFORE, plaintiffs respectfully request that the Honorable Court declare defendants jointly liable for all copyright infringements alleged in the complaint, and pay the amount of \$150,000 in statutory damages, \$350,000 in Moral rights damages under P.R. statutes, order the impoundment of the infringing works, plus attorney's fees and grant any other relief as may be deemed necessary by the court.

VERIFICATION UNDER PENALTY OF PERJURY

1. I, Dennis Mario Rivera declare as follows
2. That I am the plaintiff in this case, being a natural born citizen of the United States of America, and a resident of the Commonwealth of Puerto Rico.
3. That regarding the allegations of the complaint which I have personal knowledge, I believe them to be true and if called on to testify, I would completely do so as to the matters herein.
4. That Regarding the allegations of which I do not have personal knowledge, I believe them to be true based on specified information, documents, or both.
5. That I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3, 2013.



DENNIS MARIO RIVERA

REESPECTFULLY SUBMITTED

In San Juan, Puerto Rico this 3rd day of June, 2013.

s/ROBERTO SUEIRO DEL VALLE
USDC No. 207801
Tulipán 170
Urb. San Francisco
San Juan, PR 00927-6221
Tel.: 753-4712
Fax: 274-0191
E-MAIL: rsdv@me.com

s/FREDDIE OSCAR TORRES
USDC No.
Tulipán 170
Urb. San Francisco
San Juan, PR 00927-6221
Tel.: 753-4712
Fax: 274-0191
E-MAIL: ftorres151@gmail.com